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No. 07-534

In The

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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

MATTHEW A. CRAIG,

Petitioner

v.

JOHN BRIGADIER, SUSAN M. BRIGADIER, DAVID L. BRIGADIER, JACQUELYN F. LENSON, RISER FOODS COMPANY, d/b/a GIANT EAGLE, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF

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ARGUMENT

I. RESPONDENTS OPPOSE THE PETITION THROUGH UNSUSTAINABLE FACTUAL CONCLUSIONS AND MISCHARACTERIZATIONS AS TO THE NATURE OF THE WITHIN ACTION.

In opposing Petitioner Matthew A. Craig's (hereinafter "Craig") *Petition for Writ of Certiorari* (hereinafter "*Petition*"), Respondents both materially misstate the facts of this case on several occasions in an apparent gamble that this Court will not take an independent review of the facts and impermissibly attempt to misdirect Craig's claims and the arguments he has made throughout this case. Respondents first attempt to misdirect this Court in asserting that Craig premises his defamation and tortious interference claims on an internal sexual harassment charge filed by Respondent John Brigadier. (Brief in Opp. at 1). However, nothing in the *Complaint*, *First Amended Complaint* (hereinafter "FAC"), nor any of the other documents Craig has submitted in this case indicates that he premises his claims on an internal sexual harassment charge filed by Respondent John Brigadier.[1]

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[1] Respondents apparently rely upon this misstatement to support their erroneous conclusion that the grievances Craig initially lodged pursuant to a CBA grievance procedure following his termination are the same claims he presents in his FAC. (Brief in Opp. at 7-8, 14). Respondents' position that the *Complaint* must contain the same claims that Craig made pursuant to a grievance procedure of a CBA since Craig filed his *Complaint* around the same time that he filed his grievance not only lacks logic, but any review of the grievances Craig made pursuant to a CBA

Respondents next attempt to misdirect this Court in asserting that Craig brought the instant action to challenge the outcome of an arbitration decision relating to a collective-bargaining agreement ("CBA"). (Brief in Opp. at 3, 11). As Respondents' own admissions show, though, Craig filed his *Complaint* on July 20, 2004, whereas the arbitration decision Respondents refer to did not come into existence until nearly a year later, on June 22, 2005. (Brief in Opp. at 8). In fact, Respondents admit that Respondent Riser did not first deny Craig's grievances under the relevant CBA until July 27, 2004, a week *after* Craig had filed suit. (Brief in Opp. at 8). Accordingly, as Craig previously indicated in his *Petition*, one could not reasonably construe the instant lawsuit as an attempt to challenge the arbitration decision referred to by Respondents.[2]

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grievance procedure will reveal that the claims Craig asserts in the case *sub judice* are legally and factually distinct from the CBA grievances.

[2] The fact that the arbitration proceeding was completely separate and irrelevant to Craig's commencement of the instant litigation for state law torts answers Respondents complaint that Craig has "artfully avoided informing this Court of the outcome of the arbitration award". (Brief in Opp. at 21).

II. RESPONDENTS FAIL TO RECOGNIZE THE LESSONS OF *LINGLE* AND FAIL TO IDENTIFY CBA TERMS THAT REQUIRE INTERPRETATION.

Respondents' accusation that Craig misstates the law at page 13 of his *Petition* with regard to preemption under section 301 of the Labor-Management Relations Act (hereinafter "LMRA") is unjustified. (Brief in Opp. at 13 n.6). This Court has specifically said that:

> [E]ven if dispute resolution pursuant to a collective-bargaining agreement, on the one hand, and state law, on the other, would require addressing precisely the same set of facts, as long as the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for § 301 pre-emption purposes.

Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 409-410 (1988). Moreover, this Court summarized its holding in *Lingle* as follows: "an application of state law is pre-empted by § 301 of the Labor Management Relations Act of 1947 *only* if such application requires the interpretation of a collective-bargaining agreement". *Id.* at 413 (emphasis added).

Respondents' next argument that each of Craig's claims requires interpretation of CBA terms is likewise unjustified. In so arguing, Respondents fail to identify a single CBA term that requires interpretation. Instead, Respondents decline to heed this Court's instruction in *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 396-97 (1987) and attempt to re-characterize Craig's claims as claims "for wrongful discharge and demotion". (Brief in Opp. at 14).

Respondents then summarily contend that the claims "require interpretation of the Agreement" because "the Court must review the standards for discharge under the CBA". (Brief in Opp. at 14-15). Even if Respondents could properly re-characterize Craig's claims as claims for wrongful discharge, a practice this Court admonished against in *Caterpillar*, 482 U.S. at 396-97, it does not follow that such claims would require interpretation of a CBA. As this Court has instructed:

> [T]he mere fact that a broad contractual protection against discriminatory or retaliatory discharge may provide a remedy for conduct that coincidentally violates state-law does not make the existence or the contours of the state law violation dependent upon the terms of the private contract. For even if an arbitrator should conclude that the contract does not prohibit a particular discriminatory or retaliatory discharge, that conclusion might or might not be consistent with a proper interpretation of state law. In the typical case a state tribunal could resolve either a discriminatory or retaliatory discharge claim without interpreting the "just cause" language of a collective-bargaining agreement.

Lingle, 486 U.S. at 412-13.

Apparently realizing that this Court may not fall for their re-characterizations, Respondents then argue that the elements of Craig's defamation and tortious interference claims require interpretation of a CBA for their proof. (Brief in Opp. at 15, 19-20). However, the elements of the defamation claims in the United States Courts of Appeals cases Craig cited in his *Petition* are virtually identical to the

elements of the defamation claims in the case *sub judice*.[3] Notwithstanding the virtually identical elements, the Fourth,[4] Eighth,[5] and Ninth[6] Circuits have most recently held that proof of the defamation claims in the cases before them *did not* require interpretation of a CBA while the Second[7] and Sixth[8] circuits have most recently held that proof of the defamation claims *did* require interpretation of a CBA.[9] Thus, a conflict exists among the circuits.[10]

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[3] See, for example, the elements of defamation claims for the states of California, Iowa, Maryland, Michigan, New York, and Ohio located in the Appendix.

[4] *Dashields v. Robertson*, 2000 U.S. App. LEXIS 9533 (4th Cir. 2000) (defamation claim under Maryland law – see Appendix).

[5] *Graham v. Contract Transp., Inc.*, 220 F.3d 910 (8th Cir. 2000) (defamation claim under Iowa law – see Appendix).

[6] *Lopez v. Fox Television Animation, Inc.*, 76 Fed. Appx. 769 (9th Cir. 2003) (defamation claim under California law – see Appendix).

[7] *Campbell v. Kane*, 144 Fed. Appx. 127 (2d Cir. 2005) (defamation claim under New York law – see Appendix).

[8] *Potts v. Wilson*, 54 Fed. Appx. 190 (6th Cir. 2002) (defamation claim under Ohio law); *DeCoe v. Gen. Motors Corp.*, 32 F.3d 212 (6th Cir. 1994) (defamation claim under Michigan law).

[9] Later in their Brief, Respondents change their argument and, instead, argue that the divergence between the Courts of Appeals' decisions regarding LMRA preemption of defamation claims actually results from differences in the facts of the cases rather than the element composition of the claims. (Brief in Opp. at 19). However, Respondents completely fail to explain how the facts materially differed among the cases and how those facts resulted in differing outcomes. Furthermore, this Court has

In arguing that a court must "interpret [Riser's] right under the CBA to implement the sexual harassment policy, the reasonableness of that policy, and the Defendants' application of that policy to determine whether any of the alleged reports were 'unprivileged' and at 'fault'" in order for Craig to prove his defamation claims (Brief in Opp. at 15), Respondents not only, again, mischaracterize Craig's claims as have anything to do with Respondent Riser's sexual harassment policy or reports made pursuant to that policy, but Respondents misconstrue proof of fault as requiring proof of the non-existence of a CBA defense. Respondents cannot evade this Court's pronouncement that defenses based upon a CBA are insufficient to give rise to removal jurisdiction. *Caterpillar*, 482 U.S. at 398-99. Here, Craig need only prove fault as defined by Ohio tort law. Had no CBA existed, Craig could readily prove his defamation claims as they presently rest on the face of his FAC. It is nonsensical that Craig cannot prove the same claims where a CBA happens to exist.[11]

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previously rejected Respondents' argument, saying "it is the legal character of a claim [rather than the facts underlying the claim]...that decides whether a state cause of action may go forward". *Livadas v. Bradshaw*, 512 U.S. 107, 123-24 (1994).

[10] *See also Livadas v. Bradshaw*, 512 U.S. 107, 124 n.18 (1994) (recognizing a conflict among the circuits with respect to LMRA preemption analysis); *Schacht v. Caterpillar, Inc.*, 503 U.S. 926, 926-27 (1992) (White, J., dissenting) (recognizing conflict).

[11] As to the "unprivileged" aspect of a defamation claim, Ohio courts do not actually impose upon a plaintiff the initial burden of showing that a defendant made a defamatory statement without privilege. *See, e.g.,*

Although the courts below did not decide the matter, Respondents misstate Ohio law in asserting that a tortious interference with contract/employment claim requires a showing that a party breached the underlying contract. Craig, indeed, did not cite *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 650 N.E.2d 863 (1995) in his *Petition* but, instead, cited the Ohio Supreme Court's later decision of *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 707 N.E.2d 853 (1999) in setting forth the required elements for a tortious interference claim. (Petition

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Kanjuka v. MetroHealth Med. Ctr., 151 Ohio App.3d 183, 191, 783 N.E.2d 920 (8th Dist. 2002); *Denlinger v. City of Columbus*, No. 00AP-315, 2000 Ohio App. LEXIS 5679, *27-28 (10th Dist. Dec. 7, 2000). Rather, courts hold that the mere assertion that a defamatory statement was unprivileged is sufficient unless and until the defendant demonstrates applicability of the affirmative defense of privilege. *Denlinger*, 2000 Ohio App. LEXIS 5679 at *27-28. Furthermore, Ohio courts have consistently held that an allegation of malice in a complaint precludes a finding of privilege when determining the sufficiency of a stated defamation claim. *See, e.g., Denlinger*, 2000 Ohio App. LEXIS 5679 at *27-28; *Bell v. Horton*, 107 Ohio App.3d 824, 829-30, 669 N.E.2d 546 (4th Dist. 1995). Craig has repeatedly asserted that Respondents published the defamatory statements with malice. (See Petition at 3-5, Appendix 17-29). Moreover, in the present case, the statements complained-of are clearly of the type to subject Craig to ridicule or to injuriously affect his profession, thus constituting *defamation per se*. *Elwert v. Pilot Life Ins. Co.*, 77 Ohio App.3d 529, 540, 602 N.E.2d 1219 (1st Dist. 1991). Defamation per se presumes malice. *Id.*; *Kanjuka*, 151 Ohio App.3d at 192.

at 19-20).[12] The Ohio Supreme Court's later decision, decisions by various intermediate Ohio courts of appeals, and decisions by various federal courts interpreting Ohio law, including the Sixth Circuit Court of Appeals, confirm that breach is not a required showing to prove a tortious interference claim in Ohio. *See, e.g., Fred Siegal Co.,* 85 Ohio St.3d at 176; *Doyle v. Fairfield Mach. Co., Inc.,* 120 Ohio App.3d 192, 216-17, 697 N.E.2d 667 (11th Dist. 1997); *Brookeside Ambulance, Inc. v. Walker Ambulance Serv.,* 112 Ohio App.3d 150, 155-56, 678 N.E.2d 248 (6th Dist. 1996); *Lovely v. Aubrey*, 188 F.3d 508, 1999 U.S. App. LEXIS 21055, *15 (6th Cir. 1999) ("under Ohio law...breach of the underlying contract is not an essential element of [a] tortious interference claim"); *Petrovski v. Fed. Express Corp.*, 240 F. Supp. 2d 685, 689-91 (N.D. Ohio 2002) (the plaintiff need only show that the wrongdoer *intended* to cause contract breach or procure the termination of an employment relationship).[13] Respondents' argument that Craig's tortious

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[12] Respondents' assertion that the *Kenty* court established the claim for tortious interference in Ohio is erroneous. Ohio courts have long recognized the claim of tortious interference with contract. One of the most widely-cited authorities for tortious interference claims in Ohio is *Juhasz v. Quik Shops, Inc.*, 55 Ohio App.2d 51, 379 N.E.2d 235 (9th Dist. 1977). Ohio appellate courts continue to follow *Juhasz*, and the identical definition of tortious interference it promulgated, when confronted with tortious interference claims. *See, e.g., Fuller & Assocs. v. Heil Windermere Moving & Storage, Inc.*, 2005-Ohio-2599, ¶28 (5th Dist. 2005); *Costaras v. Dunnerstick*, 2004-Ohio-6266, ¶¶8-9 (9th Dist. 2004).

[13] The present case is not unlike *Dryden, supra*, where the Ohio Court of Appeals for the First District found that the LMRA did not preempt a tortious interference claim brought by a discharged employee against his

interference claims require a showing of contract breach is, therefore, without merit. [14]

III. RESPONDENTS AND THE COURTS BELOW MISS THE DISTINCTION BETWEEN AN ACTION BEING REMOVABLE TO FEDERAL COURT AND LMRA PREEMPTION OF THAT ACTION.

There, in fact, is a logical basis for the conclusion that the Sixth Circuit improperly approached the preemption issue in *DeCoe*. As this Court has said, irrespective of the complete preemption doctrine, the face of a plaintiff's complaint must indicate reliance on federal law in order for a defendant to remove the matter to federal court. *Caterpillar*, 482 U.S. at 398-99. On examination of DeCoe's complaint,

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coworkers. *Dryden,* 135 Ohio App.3d at 400-01. The *Dryden* court concluded that 1) the employee's right of noninterference by his coworkers was a creation of state law and not a CBA and 2) the employee's claim of tortious interference did not require interpretation of a CBA. *Id.*

[14] Although a plain reading of *Int'l Union, United Mine Workers of America v. Covenant Coal Corp.*, 977 F.2d 895 (4th Cir. 1992) and subsequent interpretation of that decision appear to conflict on the issue of LMRA preemption of claims against persons not parties to a CBA, the Fourth Circuit's decision and the Sixth Circuit's decision in the case *sub judice* holding the LMRA to preempt defamation and tortious interference claims against persons not parties to a CBA nonetheless illuminate an important issue in the area of LMRA preemption that this Court has not previously decided.

though, none of the defamation, tortious interference, civil conspiracy, and intentional infliction of emotional distress claims relies upon the existence of a CBA. (See Appendix at 1-8). Although DeCoe described the defendants' tortious motive cognizable under state law as arising in the employment context and described the negative impact the torts had on his employment, the rights upon which DeCoe sought relief were those born of state law. Once the defendants in *DeCoe* removed the complaint to federal court, though, rather than determining removeability of DeCoe's complaint based upon the complaint itself, as this Court has directed, the courts in *DeCoe* engaged in an examination of various provisions of a CBA the *defendants* cited in defense of DeCoe's claims.

DeCoe exemplifies courts' often misapplication of the complete preemption doctrine to artificially create removal jurisdiction even when a complaint evidences no reliance upon federal law or CBA provisions and the action may otherwise proceed under state law. As this Court has indicated, even where the LMRA may ultimately preempt an action, it does not follow that the defendants may remove it to federal court. *Caterpillar*, 482 U.S. at 398-99. In the case *sub judice*, like the complaint in *DeCoe*, Craig's FAC contained no federal claims on its face. In fact, the Sixth Circuit acknowledged that Craig's FAC relied *exclusively* upon Ohio law. (Petition at Appendix 6). Consequently, pursuant to this Court's prior decisions, the federal courts below were without jurisdiction to consider the existence of LMRA preemption in the first instance. Therefore, this Court should grant certiorari to make plain the distinction between removeability and preemption the Sixth Circuit has

consistently failed to recognize.[15]

IV. THE DOCTRINE OF COLLATERAL ESTOPPEL ("ISSUE PRECLUSION") DOES NOT APPLY IN THIS CASE.

As Respondents apparently recognize, in order for the doctrine of collateral estoppel ("issue preclusion") to preclude the re-litigation of a particular issue, the party invoking the doctrine must establish the existence of four (4) elements. While failure to establish the existence of even one of the elements would render the doctrine inapplicable, Respondents have failed to establish any element. Most importantly, this Court and the Ohio Supreme Court have already determined that collateral estoppel does not apply to claims independent of a CBA, even where an arbitrator had previously decided the factual issues underlying those claims in resolving a dispute under a CBA. *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 737-45 (1981); *McDonald v. City of West Branch, Michigan*, 466 U.S. 284, 287-92 (1984); *Youghiogheny & Ohio Coal Co. v. Oszust*, 23

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[15] This Court should note that of the 123 instances in which courts have cited *DeCoe*, as Respondents allege, only 17 involved courts located outside of the Sixth Circuit and, of those 17, several courts have questioned or otherwise criticized the decision. *See, e.g., Hirras v. Natl. R.R. Passenger Corp.*, 44 F.3d 278 (5th Cir. 1995) (noting the Sixth Circuit's failure to consider *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994)); *In Re Prudential Ins. Co. of Am. Sales Practices Litig.*, 924 F. Supp. 627, 643 n.13 (D.N.J. 1996) (declining to adopt).

Ohio St.3d 39, 41-45, 491 N.E.2d 298 (1986).[16]

Just as they have attempted to re-characterize Craig's claims so that they can argue that preemption bars his claims, Respondents now attempt to re-characterize Craig's claims so that they may argue that collateral estoppel bars his claims. However, Respondents' attempt at re-characterization fails here just as it fails with respect to arguing application of LMRA preemption. Accordingly, Craig respectfully requests this Court to grant his *Petition for Writ of Certiorari*.

Respectfully submitted,

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[16] Decisions such as *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994) and *Minnick v. City of Middleburg Heights*, 2003-Ohio-5068 (8th Dist. 2003), involving state-law claims brought by plaintiffs *after* arbitrators had determined that employers had discharged the plaintiffs for "just cause" under a CBA, further indicate that claims premised on rights external to a CBA may proceed despite the fact that an arbitrator has previously decided the same factual issue when rendering a decision pursuant to a CBA.

APPENDIX

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF GENESEE

ROBERT DECOE,
Plaintiff,

No. 91
JUDGE:

vs

GENERAL MOTORS CORPORATION, DEBRA A. KLINE, PHYLLIS L. EVANS, KARAN S. MAURINA, MARJORIE E. CROCKER-HAMPTON, JERRI LYNN KRONENWETH, ANN M. GLYNN, ROXANNE M. DURHAM and CYNTHIA S. WHITE,
Defendants.

* * * * * * * * * * * * * * *

LAW OFFICE OF GLEN N. LENHOFF
BY: GLEN N. LENHOFF (P32610)
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* * * * * * * * * * * * * *

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other

civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a Judge in this Court.

COMPLAINT AND JURY DEMAND

PARTIES AND JURISDICTION

Now Comes Plaintiff Robert DeCoe, by and through his attorneys, the Law Office of Glen N. Lenhoff, and hereby

complains of Defendants General Motors Corporation, Debra A. Kline, Phyllis L. Evans, Karen S. Maurina, Marjorie E. Crocker-Hampton, Jerri Lynn Kronenweth, Ann M. Glynn, Roxanne M. Durham and Cynthia S. White, as follows.

1. Plaintiff is a resident of the State of Michigan.
2. The individual Defendants in this case are residents of the State of Michigan.
3. Defendant General Motors Corporation is a corporation which transacts business in the State of Michigan.
4. The claims which Plaintiff assert in this case include: slander, civil conspiracy, tortious interference with economic relations. The claims in this case exceed Ten Thousand ($10,000.00) Dollars.
5. This Court has subject matter jurisdiction over this case based on the Court's general subject matter jurisdiction codified at MCLA Section 600.605.

GENERAL ALLEGATIONS

6. At all times pertinent to this lawsuit, Plaintiff has been employed as a committee man for Local 326 of the United Auto Workers.

7. The said committee man duties of Plaintiff involve important affairs of United Auto Workers Local 326 at the General Motors Cold Water Plant located in Genesee County, Michigan.

8. At all times pertinent to this case, Al Herold was Plant Manager at the said Coldwater Plant.

9. As Plant Manager, the said Mr. Herold had a very close relationship with Defendants Debra Kline and Jerri Lynn Kronenweth.

10. The said Defendants Kline and Kronenweth, at the behest of Al Herold, took a dislike to Plaintiff.

11. In addition, the individual Defendants in this case, Defendants Kline, Evans, Maurina, Crocker-Hampton, Kronenweth, Glynn, Durham and White were active in a faction in Local 326 that was in opposition to Plaintiff.

12. Because of the said Union political differences with Plaintiff, Defendants Kline, Evans, Maurina, Crocker-Hampton, Kronenweth, Glynn, Durham and White (hereinafter the individual Defendants) desired to wrest Plaintiff' committee man position away from Plaintiff.

13. The combination of Plant Manager Herold's encouragement and the said political reason for seeking Plaintiff's discharge caused the individual defendants in this case to file sham and spurious sex harassment complaints against Plaintiff and to state, on many occasions, to third

persons in the plant, that Plaintiff had committed vulgar and offensive sexual touchings and had directed vulgar and obscene language toward them.

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14. The said statements concerning Plaintiff were also made by the said Plant Manager Herold who well knew that the charges were not true

15. The said statements concerning Plaintiff were not true, and have lowered Plaintiff's esteem in the community.

16. Furthermore, the said statements and acts of the individual Defendants as well as Defendant General Motors Corporation, acting by and through Al Herold, have gravely impaired and damaged Plaintiff's ability to function as a Local 326 committee man.

17. The facts set out above have caused Plaintiff great anxiety.

COUNT I - SLANDER CLAIM AGAINST THE INDIVIDUAL DEFENDANTS IN THIS CASE

18. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 17 above.

19. Each of the individual Defendants in this case have stated to third persons, as well as to each other, that Plaintiff committed offensive sexual touchings and directed offensive sexual language at the said individual Defendants.

20. The individual Defendants have stated they were offended by the said statements and actions of Plaintiff.

21. In fact, Plaintiff did not direct offensive sexual actions or use offensive sexual language toward the individual Defendants.

22. Accordingly, the individual Defendants have made false statements concerning Plaintiff both to each other and to other third persons in the plant.

23. Accordingly, Plaintiff hereby asserts a slander claim against the individual Defendants.

COUNT II - SLANDER CLAIM AGAINST DEFENDANT GENERAL MOTORS CORPORATION

24. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 23 above.

25. Al Herold, as Plant Manager of General Motors Corporation, has stated to third persons including the individual Defendants that Plaintiff committed offensive sex based acts and used foul language of a sexual nature on the job as a Local 326 committee man.

26. The said accusation concerning Plaintiff is untrue.

27. The said statements by Defendant General Motors, acting and through Al Herold have caused Plaintiff great emotional distress.

28. Accordingly, Plaintiff hereby asserts a slander claim against Defendant General Motors Corporation.

COUNT III - TORTIOUS INTERFERENCE CLAIM AGAINST EACH AND EVERY DEFENDANT

29. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 28 above.

30. Defendants have deliberately interfered with Plaintiff's job as a Local 326 committee man.

31. Defendants have carried out the said interference maliciously and in bad faith.

32 Defendants have disrupted Plaintiff's employment and have caused Plaintiff not to be able to effectively function as a Local 326 committee man.

33. Accordingly, Plaintiff hereby asserts a tortious interference with economic relations against each and every Defendant in this case.

COUNT IV - CIVIL CONSPIRACY CLAIM AGAINST EACH AND EVERY DEFENDANT

34. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 33 above.

35. The individual Defendants in this case entered into a plan and agreement concerning Plaintiff.

36. Under the plan and agreement, the individual Defendants sought to nullify Plaintiff's effectiveness as a Local 326 committee man.

37. The individual Defendants planned to and agreed on doing so by way of circulating false statements about Plaintiff and asserting false accusations of sex harassment against Plaintiff.

38. Accordingly, Defendants entered into and carried out a plan to harm Plaintiff's professional life and employment by way of the unlawful means of slandering Plaintiff.

39. Accordingly, Plaintiff hereby asserts a civil conspiracy claim against each and every Defendant in this case.

COUNT VI - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST THE INDIVIDUAL DEFENDANTS IN THIS CASE

40. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 39 above.

41. Defendants' acts toward Plaintiff, the acts of deliberately concocting spurious sex harassment charges and thereby besmirching Plaintiff's name and reputation, are shocking to the senses and outrageous.

42. Defendants have carried out the above acts in order to wrest Plaintiff's job from Plaintiff and cause Plaintiff severe emotional distress.

43. Accordingly, Plaintiff hereby asserts an intentional infliction of emotional distress claim against each and every Defendant in this case.

WHEREFORE, Plaintiff prays for judgment against Defendants in damages in such sum in excess of Ten Thousand ($10,000.00) Dollars as the jury deems just, together with costs and interest.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in the captioned case as guaranteed by Rule 2.508(B) of the Michigan Court Rules.

Respectfully Submitted,
LAW OFFICE OF GLEN N. LENHOFF

Dated: ____ _____//s_____
By: Glen N. Lenhoff (P-32610)
Attorney for Plaintiff

717 South Grand Traverse
Flint, MI 48502

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DEFAMATION ACTION UNDER CALIFORNIA LAW

A defamation claim under California law requires: (1) a false and unprivileged statement, (2) published to a third person, (3) that tends to directly injure another. *Lundquist v. Reusser*, 31 Cal. Rptr.2d 776, 776, 7 Cal.4th 119 (Cal. 1994).

DEFAMATION ACTION UNDER IOWA LAW

A defamation claim under Iowa law requires: (1) a statement having a tendency to injure a person's reputation or good name (2) published to one or more third persons. *Taggart v. Drake Univ.*, 549 N.W.2d 796, 802 (Iowa 1996); *Kiesau v. Bantz*, 686 N.W.2d 164, 175 (Iowa 2004)

DEFAMATION ACTION UNDER MARYLAND LAW

A defamation claim under Maryland law requires: "(1) that the defendant made a defamatory statement to a third person, (2) that the statement was false, (3) that the defendant was legally at fault in making the statement, and (4) that the plaintiff thereby suffered harm." *Offen v. Brenner*, 2007 MDCA 1-111407 (Nov. 14, 2007); *Smith v. Danielczyk*, 400 Md. 98, 115, 928 A.2d 795, 805 (2007).

DEFAMATION ACTION UNDER MICHIGAN LAW

A defamation claim under Michigan law requires: "(1) a false or defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm for defamation per se, or the existence of special harm caused by publication for defamation per quod." *Laney v. Blue Cross Blue Shield of Mich.*, No. 236977 (Mich. App. March 11, 2003) (citing *Kefgen v Davidson*, 241 Mich. App. 611, 617; 617 N.W.2d 351 (2000)).

DEFAMATION ACTION UNDER NEW YORK LAW

A defamation claim under New York law requires: (1) a false statement tending to expose the plaintiff to public contempt, ridicule, or disgrace, (2) published without privilege or authorization to a third party, (3) constituting fault as judged by, at a minimum, a negligence standard, and (4) either cause special harm or qualification as defamation per se. *Dillon v City of New York*, 261 A.D.2d 34, 37-38 (1999); citing Restatement of Torts, Second § 558.

DEFAMATION ACTION UNDER OHIO LAW

A defamation claim under Ohio law requires: (1) a false and defamatory statement; (2) in written (or oral) form; (3) that is published without privilege to a third person; (4) fault of the publisher for making the publication and; (5) in some instances, damages sustained therefrom. *Lawson v. AK Steel Corp.*, 121 Ohio App.3d 251, 256, 699 N.E.2d 951 (12th Dist. 1997); *Franks v. The Lima News*, 109 Ohio App.3d 408, 412, 672 N.E.2d 245 (3d Dist. 1996).